THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.19062 of 2007

Date:19 .12.2007

Between:

K.Ramachandracharyulu

..PETITIONER

AND

The Assistant Commissioner and others

..RESPONDENTS

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ORDER:

Heard Sri S.Subba Reddy, representing Sri V.L.N.Gopala Krishna Murthy, the learned counsel for the petitioner, the learned Government Pleader for Endowments, Sri V.T.M.Prasad and Sri A.Gopala Krishnamacharyulu, the learned counsel representing the respondents.

This Court ordered notice before admission on 10.09.2007 and an order of *status quo* was made for a limited period. Subsequent thereto, the order of *status quo* was extended for further limited period. This Court issued Rule nisi on 25.10.2007. The order of *status quo* already passed was extended for further limited period. The third respondent filed W.P.M.P.No.2418 of 2007 and the second respondent filed W.V.M.P.No.3065 of 2007. The petitioner also filed reply affidavit. The counsel on record made a request for final disposal of the writ petition on the ground that no further pleadings need be put in. In the light of the same, the writ petition itself is being disposed of finally.

Khandavalli Ramachandracharyulu, the petitioner, filed the present writ petition for a writ of Mandamus declaring the notice i.e. Memo No.1 of 2007, dated 03.09.2007, issued by the second respondent, as illegal, arbitrary, violative of principles of natural justice and violative of Section 37 of the Andhra Pradesh Charitable & Hindu Religious Institution & Endowments Act, 1987 (herein after referred to as 'the Act' for the purpose of convenience) and consequently, to set aside the notice referred to supra and pass such

other suitable orders. The said memo No.1 of 2007, dated 03.09.2007 reads as hereunder:

Memo No.1 of 2007, dated 03.09.2007.

Sub: Endowments – E.G. District – Kothapeta Village & Mandal – Sri Venkateswara Swamy Temple – in the matter of Archakatvam Service – Orders of the Assistant Commissioner – Endowments Department, Rajahmundry- Communicated.

Ref: 1. Legal Opinion dated 17.12.2006 from Endowments Standing Advocate, Kakinada.

2. R.C.No.A4/7563/2006, Adm., dt 20.12.2006 from Assistant Commissioner, Endowments Department, Rajahmundry.

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The following Archakatvam Servicedars of the above Temple are informed that in the reference cited, the Assistant Commissioner, Endowments Departments, Rajahmundry has issued orders instructing this Office to take necessary action as per the legal opinion first cited in the matter of allotment of Archakatvam Service in the Temple to Sri Srirangacharyulu and his own brothers. In the said legal opinion, the standing counsel for Endowments has stated that Sri Khandavalli Sri Rangacharyulu, Sri Khandavalli Srinivasacharyulu and Sri Khandavalli Phani Raja Venugopalacharyulu sons of Sri Khandavalli Suryanarayanacharyulu are the legal heirs as per Hindu Succession Act, 1956 and that they are alone entitled to render Archakatvam Service in the above Temple.

Hence Sri Khandavalli Ramachandracharyulu, S/o.Rangacharyulu is directed to hand over charge of Archakatvam Service to Sri Khandavalli Srirangacharyulu and his own brothers within one week.

Sri Khandavalli Sri Rangacharyulu Archaka is directed to take charge from the above Archaka and report with charge list.

MANAGER Sri
Venkateswara Swamy Temple,
Kothapeta Village,
Kothapeta Mandal, E.G.District.

It is needless to say that this memo which is impugned in the

present writ petition had been issued by the Manager, Sri Venkateswara Swamy Temple, Kothapeta Village, Kothapeta Mandal, E.G.District, the second respondent herein and in the reference, the legal opinion, dated 17.12.2006, from the Endowments Standing Counsel, Kakinada and R.C.No.A4/7563/2006, Administration, dated 20.12.2006, of the Assistant Commissioner, Endowments Department, Rajahmundry had been referred to.

Sri S.Subba Reddy, the learned counsel representing Sri V.L.N.Gopala Krishna Murthy, the learned counsel for the petitioner had taken this Court through the contents of the affidavit filed in support of the writ petition and the respective stands taken in the counter-affidavits and also how the same had been explained even in the reply affidavit and would maintain that the Manager concerned cannot be equated with an Executive Officer and on the strength of such legal opinion or the proceedings of the Assistant Commissioner of Endowments, such action cannot be taken, even otherwise there is total non application of mind on the part of the second respondent in passing the impugned memo. The learned counsel further explained the scope and ambit of Sections 37 and 38 of the Act and also would maintain that in the light of the clear language of Section 37(3) of the Act, in a way, the right of appeal is also lost to the petitioner. Further, the learned counsel would contend that the Trust has initiated any action in the light of the language of Section 38 of the Act. The learned counsel also pointed out to the relevant Rules of the Office Holders and Servants Punishment Rules 1987 (hereinafter referred to as 'the Rules' for the purpose of convenience). The learned counsel also made elaborate submissions in relation to the competency of the second respondent

to pass the impugned memo. The learned counsel also relied upon certain decisions.

The learned Government Pleader for Endowments had taken this Court through the relevant provisions of the Act and the Rules and would maintain that on a careful analysis of the relief prayed in the writ petition, the direction issued by the first respondent, Assistant Commissioner of Endowments, Rajahmundry, was unchallenged and consequential memo issued by the second respondent alone had been called in question and inasmuch as it is only a consequential action, the writ petition is bound to fail on that ground alone. The learned Government Pleader for Endowments also would maintain that inasmuch as elaborate counter-affidavit had been filed by the second respondent, there is no need to file a separate counter-affidavit on behalf of the first respondent, especially in view of the fact that the action of the first respondent as such had not been impugned in the writ petition. The learned counsel also would maintain that since the impugned action is not imposition of penalty or any suspension whatsoever, Sections 37 and 38 of the Act are not applicable at all. The opinion of the counsel is only a legal opinion. The first respondent is having general powers under Section 11 of the Act. The memo issued by the second respondent is not an independent memo and is only carrying out the directions issued by the first respondent and the first respondent issued such directions under general powers. Even otherwise, in the light of the nature of controversial question raised in the writ petition, such disputed questions definitely cannot be gone into in a writ petition and hence the same is liable to be dismissed.

Sri V.T.M.Prasad the learned counsel representing the second

respondent had taken this Court through Sections 37 and 38 of the Act and also the contents of the counter-affidavit and would maintain that in the light of the respective stands taken by the contesting parties, the petitioner and the third respondent, let these parties be driven to the competent authority, the Deputy Commissioner of Endowments Kakinada who may effectively go into these questions and decide the same. At any rate, this remedy by way of writ petition is a misconceived remedy.

Sri Sri Gopala Krishnamacharyulu, the learned counsel representing the third respondent would justify the memo issued by the second respondent and also had taken this Court through the provisions of the Act and also had drawn the attention of this Court to the relevant definitions and Sections 37 and 38 of the Act as well.

It is the case of the petitioner that he has been discharging the duties of Archaka in Sri Venkateswara Swamy Temple, Kothapeta Village and Lord Venugopala Swamy Temple, Ethakota of East Godavari District. Sri Venkateswara Swamy Temple is classified as 6 (c) temple in the records of the Endowments Department and the income of the temple is less than Rs.1,00,000/- to the knowledge of the petitioner.

It is also stated that originally, his grandfather Khandavalli Seetharamacharyulu was Archaka of the said temple. He had got three sons, namely Narayanacharyulu, Lakshmanacharyulu and Rangacharyulu. In the year 1961, the above three persons entered into an agreement with the Endowments Department with regard to Archakatvam Service etc., to the aforesaid temples. As per the said compromise, the above three persons discharged their duties during their lifetime in rotation basis i.e. one after the other. The same arrangement is being continued till today by their successors in

interest i.e. the petitioner and the sons of other branches.

As matters stood thus, the son of late Narayanacharyulu i.e. Suryanarayanacharyulu along with sons filed suit being O.S.No.88 of 1992 on the file of the District Munsiff, Kothapeta against the petitioner and others for a declaration that they are the only surviving hereditary Archakas of the Deity Lord Sri Venkateswara Swamy Temple, Kothapeta and Lord Venugopala Swamy Vari Temple, Ethakota as per the compromise agreement of June 1961 and also for mandatory injunction directing defendants 4 and 5 to recognize the plaintiffs now as the only surviving hereditary Archakas of the above temples together with the emoluments consisting of plaint 'A', 'B', and 'C' schedule properties attached thereto and further prayed for consequential relief of permanent injunction and also prayed for declaration that the adoption of the petitioner is not valid and true and further prayed for certain other reliefs.

The petitioner filed written statement and contested the suit. The Endowments Department, represented by the second respondent herein also filed the written statement. The said suit was dismissed for default on 18.10.2000 and an application to set aside the default order is still pending consideration in the Court. Though the said suit was filed as against the petitioner and others, the petitioner and other party defendants have been discharging their duties as Archakas to the above two temples on rotation basis as on today and thus, the petitioner has been continuing as Archaka of Sri Venkateswara Swamy Vari Temple. The other contesting defendants in the suit are discharging duties of Archakas in Lord Venugopalaswamy Temple.

Further, it is the specific case of the petitioner that late Rangacharyulu during his lifetime executed a registered Will deed,

dated 31.07.1954, authorizing his wife to adopt a boy. After the death of Rangacharyulu, his wife Venkata Narasamma adopted the petitioner in the year 1969 as per law. A registered adoption deed was also executed and since the year 1970, the petitioner has been discharging Archakatvam duties to the above temples on rotation basis. In fact, in the written statement filed by the Endowments Department, it was averred that the petitioner has been discharging his duties as Archaka in the above temples on rotation basis and also admitted the Will as well as the adoption. A strong reliance was placed on a judgment of the Supreme Court in **Sitabai v. Ramchandra**[1].

It is further stated that as matters stood thus, the second respondent issued the notice, dated 03.09.2007, directing the petitioner to handover the charge of Archakatvam service to Khandavalli Srirangacharyulu and his own brothers within one week. The notice further recites that the said Srirangacharyulu to take charge from the petitioner and report with charge list. The said order issued is contrary to Section 37 of the Act. The second respondent does not have the power to issue such a notice. In fact,

Sri Venkateswaraswamy Vari Temple where the petitioner has been discharging his duties is classified as 6(c) temple in the endowments records and Trust Board is constituted and trustees are discharging their duties as per the Rules. In the notice, which is impugned in the writ petition, references referred to legal opinion and a communication of the first respondent. At no point of time, the petitioner was served with notice before passing the impugned order. The said action of the second respondent is arbitrary, illegal and violative of principles of natural justice. The written statement filed

by the second respondent in O.S.No.88 of 1992 is placed before this Court. In such circumstances, it is stated that the petitioner being left with no other option approached this Court, praying with appropriate reliefs specified above.

The second respondent filed counter-affidavit. He had taken a stand that the first respondent through his proceedings in R.C.No.7563 of 2006, dated 20.12.2006, while enclosing the legal opinion directed the second respondent to take action according to it in the matter of allotment of Archakatvam service to Sri K. Srirangacharyulu and his own brothers and report compliance. The said proceedings, dated 20.12.2006 reads as hereunder:

Office of the Assistant Commissioner,
Endowments Department, Rajahmundry.

Rc.No.A4/7563/2006 Adm, Dt:20.12.2006.

Sub: Endowments – Sri Venkateswara Swamy temple – Kothapeta Village and mandal – Rotation of Archakatvam service- certain instructions – issued – Reg.
Ref: 1. Commissioner's D.Dis.No.C1/39614/2006, dated 13.11.2006.
2. Legal opinion from Sri G.V.Krishnaprakash, standing counsel for endowments, Kakinada.
3. Lr.No. Nill Dt:18.12.2006 from the Manager of the S.T.

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The attention of the Manager of the subject temple is invited to the references cited and he is requested to take necessary action as per the legal opinion given by the Standing counsel for Endowments Dt:17.12.2006 (copies enclosed) in the matter of allotment of Archakatvam service to Sri K.Srirangacharyulu and his own brothers and report compliance.

Assistant Commissioner
(FAC)
To
The Manager of the subject temple.
Copy to the Inspector, Endowments, Rajahmundry.

Consequently, the matter was placed before the Trust Board, which by its resolution No.1, dated 23.02.2007, had asked the Manager to obtain further orders from the Assistant Commissioner in the light of the fact that the rotation period of discontinuing Smt.Vadapalli Ananta Goapala Ratnam from Archakatvam, who had lost her husband Vadapalli Rangacharyulu in the middle of rotation period from August 2006 to August 2007 and stopping her representative would create law and order problem.

Basing on the above resolution, the Manager had addressed a letter No.2/2007, dated 24.02.2007, to the Assistant Commissioner bringing to his notice that the said resolution and the likely law and order situation that may arise if the rotation period of Smt. Vadapalli Ananta Gopala Ratnam is suddenly brought to an abrupt end as the villagers and the Trustees have involved themselves in the issue. There is no further communication from the Assistant Commissioner on this.

The matter was placed once again before the Trust Board, which by resolution No.1, dated 29.08.2007, resolved and directed the second respondent to issue a memo to the Archakas which would include the petitioner herein and his putative brothers. In pursuance of it, the second respondent issued memo No.1 of 2007, dated 03.09.2007, to the petitioner directing him to handover charge of Archakatvam service to Khandavalli Srirangacharyulu and his brother and directed Sri Khadavalli Rangacharyulu to take charge from the petitioner. A copy of the resolution also had been placed before this Court.

In the counter affidavit filed by the third respondent, the

alternative remedy available had been referred to. The violation of the principles of natural justice in making the impugned memo also had been denied. It is averred that in fact the first respondent conducted an enquiry on 24.07.2006 in the matter of rotation of Archakatvam service by duly giving notices to all the concerned and accordingly, all the Archakas had attended the enquiry and submitted their statements in writing. Accordingly, the first respondent submitted a detailed enquiry report to the Commissioner, Endowments Department, Andhra Pradesh, Hyderabad *vide* Rc.No.A4/7563/2006, dated 17.09.2006, and requested the Commissioner to issue orders as deemed fit in the matter. Thereafter, the Commissioner directed the first respondent to take action as per compromise orders after obtaining legal opinion *vide* D.Dis.No.C1/39614/2006 dated 13.11.2006. Accordingly, a legal opinion was submitted by Sri G.V.Krishna Prakash, Advocate & Standing Counsel for Endowments Department on 17.12.2006 to the first respondent. Thereafter, the first respondent directed the second respondent *vide* Rc.No.A4/7563/2006, dated 20.12.2006, to take necessary action in the matter of allotment of Archakatvam service and accordingly the second respondent issued the impugned memo as per law. Further, it is averred that it is not correct to state that Khandavalli Seetharamacharyulu is the grandfather of the petitioner and that as on today the petitioner is continuing as Archaka of Sri Venkateswara Swamy Vari Temple as a successor in interest and that late Rangacharyulu during his lifetime executed a registered Will deed, dated 31.07.1954, authorizing his wife to adopt a boy and that after the death of Rangacharyulu, his wife Venkata Narasamma adopted him in the year 1969 as per law and that a registered adoption deed was also executed. Originally, their grandfather,

Khadavalli Seetharamacharyulu, was the Archaka of the Temple. He had three sons, namely Khandavalli Narayanacharyulu, Khandavalli Lakshmanacharyulu and Khandavalli Rangacharyulu. On 02.6.1961, the said three persons entered into a compromise with the Endowments Department with regard to Archakatvam service on rotation basis. The first son Khandavalli Narayanacharyulu had only one son by name Khandavalli Suryanarayanacharyulu and the said Suryanarayanacharyulu had three sons, namely Khandavalli Srirangacharyulu, Khandavalli Srinivasacharyulu and Khandavalli Phaniraja Venugopal. They all succeeded to the Archakatvam service on behalf of the first rotationdar. The second rotationdar, Khandavalli Lakshmanacharyulu, died issue less. His sister's son,- Vadapalli Rangacharyulu, worked as Archaka on deputation and he died on 25.10.2005 issue less. The third rotationdar, Khandavalli Rangacharyulu, also died issue less. The petitioner, who is the son of Khandavalli Rangacharyulu is illegally continued as Archaka on behalf of the third rotationdar.

It is also stated that their younger grandfathers, Khandavalli Lakshmanacharyulu and Khandavalli Rangacharyulu, have no Class-I legal heirs and the third respondent and his two brothers are only legal representatives as per Hindu Succession Act. As per the terms and conditions of the compromise, dated 02.06.1961, there is no power given or retained by any one of the Archakas that other than their legal representatives can come under service of Archakatvam and that they can settle the Archakatvam service on third parties. As per the provisions of the Act, there is no right to depute or settlement of the rights of the Archakatvam service. As per the definition of 'hereditary office-holder', the succession devolves only according to

the law of succession and the Endowments Department cannot recognize the third parties as Archakas and no settlements, will, adoptions, etc., can be recognized. Therefore, he and his brothers are entitled for Archakatvam service in the temple.

Further, it is averred that his two brothers and Smt.Vadapalli Ananthagopalaratnam, W/o. late Vadapalli Rangacharyulu who was a Deputy Archaka on behalf of the second rotationdar are also necessary parties to the writ petition and hence the writ petition is liable to be dismissed for non-joinder of necessary parties as well.

In the reply affidavit filed by the petitioner, a pedigree has been enclosed and the same is as hereunder:

It is stated in the reply affidavit that the said enquiry was conducted on the death of Vadapalli Rangacharyulu, who was

rendering Archakatvam service as per the Will executed by late Khandavalli Lakshmanacharyulu in the year 1968. It is pertinent to mention that no notices were served on the petitioner. In fact, the communication, dated 17.09.2006, referred to supra, there is no reference to the record of service of notice to the petitioner. In the said report, dated 17.09.2006, the pedigree was shown. In that, there was a mention that the petitioner has been styling himself as adopted son of late Khandavalli Rangacharyulu. The statement is running contrary to the written statement filed by the Executive Officer, Sri Venkateswaraswamy Vari Devasthanam, Kopthapeta in O.S.No.88 of 1992. It is also stated that in the communication, it was mentioned that Sri S.Markandeswara Rao, Chairman of the Trust Board has given written statement that Khandavalli Rangacharyulu worked as Deputy Archaka for the last 20 years. Recently, he expired. Hence, he has requested to entrust the turn of rotation to the wife of late Vadapalli Rangacharyulu. This is the confused state of affairs in view of the fact that Khandavalli Rangacharyulu referred to and Vadapalli Rangacharyulu are one and the same. The said Khandavalli Rangacharyulu referred to in the report is not the son of late Seetharamacharyulu. Further, specific stand had been taken by the petitioner to explain to the fact that how he got the said communication and the legal opinion given by the Standing Counsel, dated 17.12.2006. The legal opinion is a privileged communication between Advocate and his party. This shows the influence of the third respondent.

These are the respective stands taken by the parties to the present litigation. As can be seen from the respective stands taken by the parties, several disputed questions of fact are involved. Section 87 of the Act, dealing with the power of Deputy

Commissioner to decide certain disputes and matters, reads as under:

> **"Section 87: Power of Deputy Commissioner to decide certain disputes and matters:**
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> (1) The deputy Commissioner having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question
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> (a) Whether an institution or endowment is a charitable institution or endowment;
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> (b) Whether an institution or endowment is a religious institution or endowment
>
> (c) Whether any property is an endowment, if so whether it is a charitable endowment or a religious endowment;
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> (d) Whether any property is a specific endowment;
>
> (e) Whether any person is entitled by custom or otherwise to any honour, emoluments or perquisites in any charitable or religious institution or endowment and what the established usage of such institution or endowment is in regard to any other matter;
>
> (f) Whether any institution or endowment is wholly or partly of a secular or religious character and whether any property is given wholly or partly for secular or religious uses; or
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> (g) Where any property or money has been given for the support of an institution or endowment which is partly of a secular character and partly of a religious character or the performance of any service or charity connected with such institution or endowment or the performance of a charity which is partly of a secular character and partly of a religious character or where any property or money given is appropriated partly to secular uses and partly to religious uses, as to what portion of such property or money shall be allocated to secular or religious uses.
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> (2) The Commissioner may, pending his decision under sub-

section (1), pass such order as he deems fit for the administration of the property or custody of the money belonging to the institution or endowment.

(3) Every decision or order of the Deputy Commissioner on confirmation by the Commissioner under this section shall be published in the prescribed manner.

(4) Deputy Commissioner may while recording his decision under sub-section (1) and pending implementation of such decision, pass such interim order as he may deem fit for safeguarding the interests of the institution or endowment and for preventing damage to or loss or misappropriation or criminal breach of trust in respect of the properties or moneys belonging to or in the possession of the institution or endowment.

(5) Any decision or order of the Deputy Commissioner deciding whether an institution or endowment is not a public institution or endowment shall not take effect unless such decision or order is confirmed by an order of the Commissioner.

(6) The presumption in respect of matters covered by clauses (a), (b), (c), (d) and (e) in sub-section (1) is that the institution or the endowment is public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money to be other than that of a religious endowment or specific endowment, as the case may be".

Section 2 of the Act deals with the definitions. Section 2 (2) of the Act defines 'Assistant Commissioner' as hereunder:

"2 (2) In this Act, unless the context otherwise requires Assistant Commissioner means the Assistant Commissioner appointed under sub-section (1) of Section 3 and includes every officer who for the time being exercises the powers and performs the functions of an Assistant Commissioner under this Act or the rules made thereunder in respect of any charitable or religious institutions or endowments, as specified in sub-section (5) of Section 3".

Section 2 (1) of the Act defines 'Archaka' as hereunder:

"2 (1) In this Act, unless the context otherwise requires 'Archaka' includes a Pujari, Panda, an Archakatvam Mirasidar or other person, who personally performs or conducts any archana, puja or other ritual".

Section 2(9) of the Act defines 'Deputy Commissioner' as hereunder:

"2 (9) In this Act, unless the context otherwise requires Deputy Commissioner means the Deputy Commissioner appointed under sub-section (1) of Section 3 and includes every officer who for the time being exercises the powers and performs the functions of a Deputy Commissioner under this Act or the rules made thereunder in respect of any charitable or religious institution or endowment as specified in sub-section (5) of section 3."

Section 2(13) of the Act defines 'Executive Officer' as hereunder:

"2 (13) In this Act, unless the context otherwise requires Executive Officer means an Officer appointed as such under any of the provisions of this Act".

Section 2(29) of the Act defines 'Trustee' as hereunder:

"2 (9) In this Act, unless the context otherwise requires Trustee means any person whether known as mathadhipati, mohanti, dharmakarta, mutawally, muntazim or by any other name, in whom either alone or in association with any other person, the administration and management of a charitable or religious institution or endowment are vested; and includes a Board of Trustees".

Section 11 of the Act deals with the powers and functions of the Assistant Commissioner and the same reads as hereunder:

"**Section 11: Powers and functions of Assistant Commissioner:** Every Assistant Commissioner shall, within the sub-division in his charge, exercise the powers conferred on, and perform the functions entrusted to, an Assistant Commissioner as such by or under this Act in respect of all institutions and endowments included in the list published under clause (c) of Section 6:

Provided that where a specific endowment is situated in two or more sub-divisions, the Commissioner shall decide as to which of the Assistant Commissioners shall have jurisdiction to exercise the powers, or perform the functions in respect of such endowment."

Section 37 of the Act deals with punishment of office holders and servants and the said provision reads as hereunder:

"**Section 37: Punishment of office holders and servants:-**

(1) All office-holders and servants attached to a charitable or religious institution or endowment, shall be under the control of the trustee; and the trustee may, after following the prescribed procedure and for reasons to be recorded in writing, impose fine, or order suspension, removal dismissal or any other prescribed penalty, or any of them for breach of trust, misappropriation, incapacity, disobedience of orders, misconduct, violation of the code of conduct laid down or neglect of duty assigned by or under this Act or other sufficient cause.

(2) Notwithstanding anything in sub-section (1) in the case of an office-holder or servant of an institution or endowment whose annual income exceeds rupees ten lakhs, the power to impose any penalty specified in that sub-section shall, subject to such restrictions and conditions, as may be laid down by the Government, be exercised by the executive officer after following such procedure as may be prescribed.

(3) (a) Any office-holder or servant aggrieved by an order

passed under sub-section (1) by the trustee may, within sixty days from the date of receipt of the order by him, prefer an appeal to the Commissioner, the Deputy Commissioner, or the Assistant Commissioner as the case may be having jurisdiction from the order of the trustee;

(b) Any office-holder or servant aggrieved by an order passed under sub-section (2) by the Executive Officer may within sixty days from the date of receipt of the order by him prefer an appeal to the trustee.

(4) (a) Any office-holder or servant may, within sixty days from the date of receipt by him of the order passed in an appeal filed under clause (a) of sub-section (3) prefer a second appeal if such order is made by:

(i) the Commissioner, to the Government;

(ii) the Deputy Commissioner or the Assistant Commissioner, to the Commissioner;

(b) Any office-holder or servant aggrieved by an order of the trustee under clause (b) of sub-section (3) may, within sixty days from the date of receipt by him of such order, prefer a second appeal to the Commissioner.

(5) (a) Where it is noticed by the trustee that any office-holder or servant attached to an institution or endowment has not been dealt with suitably by the Executive Officer under sub-section (2), for any of the lapses specified in sub-section (1), the trustee may direct the Executive Officer to take action under sub-section (2), failing which the trustee may, after following the prescribed procedure, impose, by an order in writing any of the penalties specified in sub-section (1);

(b) Any office-holder or servant aggrieved an order, passed by the trustee or by the Executive Officer, in pursuance of the direction given under clause (a) may, within sixty days from the date of receipt of the order by him, prefer an appeal to the Commissioner".

Certain submissions were made in relation to Section 37(3) of the Act referred to supra in the context of preferring an appeal and how the writ petition is prejudiced in this regard.

Section 39 of the Act deals with the powers of Deputy Commissioner and Assistant Commissioner to transfer office-holders and servants in certain cases and the said provision reads as hereunder:

> "**Section 39: Transfer of office holders and servants:-**
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> (1) The Commissioner shall have power to transfer any office holder or servant attached to a charitable or religious institution or endowment from that institution or endowment to any other institution or endowment in accordance with such rules as may be made by the Government in this behalf.
>
> (2) The Deputy Commissioner or the Assistant Commissioner, as the case may be, having jurisdiction over the area shall have power to transfer any office holder or servant attached to a charitable or religious institution or endowment from that institution or endowment to any other institution or endowment in accordance with such rules as may be made by the Government in this behalf".

The dispute in the present case is not concerned with any punishment whatsoever. But, this is a case where the petitioner was directed to handover charge of Archakatvam service to the third respondent and his own brothers within one week. The memo No.1 of 2007, dated 03.09.2007, not only refers to the legal opinion, dated 17.12.2007, of the Endowments Standing Counsel, Kakinada, but also refers to R.C.No.4A4/7563/2006 Administration, dated 20.12.2006, of the Assistant Commissioner, Endowments Department, Rajahmundry. The copy of the legal opinion of the Standing Counsel of Endowments had been placed before this Court by the third respondent. This legal opinion was addressed by the Standing Counsel concerned to the first respondent herein. Such legal opinion

given at the request of an Officer of the Endowments Department by the Standing Counsel being the internal confidential communication should not have been placed before this Court by the third respondent. May be that this legal opinion is available in the records concerned. Be that as it may, however, this legal opinion also had been referred to in the impugned memo. As can be seen from the averments made in the affidavit filed in support of the writ petition, it appears that O.S.No.88 of 1992 was dismissed for default on 18.10.2007 and an application to set aside the said default order had been filed and the same is pending disposal. Be that as it may, it is suffice to state that several disputed questions of the fact are also involved in the respective stands taken by the parties.

Reliance was placed upon a judgment of this Court in **KONDAPAKA LAKSHMI NARSIMHA CHARYULU v J.SUDHAKAR**[2], wherein the learned Judge had observed as hereunder:

> Section 37(1) and (2) of the Endowments Act confer power only on the trustee to punish office holders-servants after following the procedure and impose the punishment of suspension, removal, dismissal or any other prescribed penalty. Indeed, under sub-section (5) of Section 37 of the Endowments Act, if an Executive Officer of a Temple fails to deal with an erring office holder/servant of a temple, the trustee can even direct such course of action and in default by the Executive Officer, impose punishment by following the procedure. Apart from this, under Section 38(1) of the Endowments Act, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, having jurisdiction, may direct the trustee or the Executive Officer to take action under Section 37 of the Endowments Act, failing which such Officer of the Department of Endowments may impose any punishment after following the procedure. Therefore, either under Section 37(1) or 38(1) of the Endowments Act, the Manager of a Temple has no disciplinary powers. The provision

empowering an authority to take disciplinary action has to be interpreted strictly and when the language of the provisions is clear, it is not possible to read some unintended word into the provisions so as to confer power on the Manager. It is also settled that a public servant can be removed or dismissed from service only in accordance with law and by an order passed following the procedure prescribed by law. Admittedly, the petitioner's father was hereditary Archaka and after demise of his father, the petitioner was appointed and recognized as Archaka governed by the new statutory regime. Therefore, the Manager is not competent to place the Archaka under suspension.

Section 38(1) of the Endowments Act confers powers on the Commissioner, Deputy Commissioner or Assistant Commissioner having jurisdiction to direct the trustee or Executive Officer to take action under Section 37 of the Endowments Act. The impugned order is purportedly issued under instructions, dated 28.09.2006, of the Deputy Commissioner of Endowments, Warangal (as seen from the reference entry in the impugned order). Whether such a thing can save the impugned order? In the considered opinion of this Court, this would not make any difference on the right of the petitioner to be dealt with legally. Section 38 of the Endowments Act enables the Deputy Commissioner to give directions to the Board of Trustee/trustee or Executive Officer when the first respondent is not admittedly a Member of Board of Trustees or a trustee within the meaning of Section 2 (29) read with Section 17 of the Endowments Act (non-hereditary Board of Trustees), the first respondent cannot be clothed with such power of initiating enquiry against the petitioner or placing him under suspension."

Reliance was also placed upon a judgment of this Court in W.A.No.491 of 2005, wherein, it was observed as hereunder:

"In any disciplinary proceedings, the necessity to appoint an Enquiry Officer arises only when the appointing authority points out certain acts of indiscipline on the part of the delinquent employee and the explanation offered by the employee is not satisfactory. On the other hand, where the explanation is found

to be satisfactory, the necessity to proceed further does not arise or remain. In V.K.Khanna's case (1 supra), the Supreme Court reinstated this position of law and held that appointment of an Enquiry Officer even before a show-cause notice or charge sheet is served upon an employee is unknown to service jurisprudence. It was further observed that in such an event, an element of bias exists vis-à-vis the Enquiry Officer.

The appointing authority would be in a position to apply his mind to the facts of the case only when he calls upon an employee to explain as to the acts of misconduct, noticed by him. Depending on his satisfaction, on consideration of the explanation, he may have to choose either to proceed further or to drop the proceedings. Even in a case, where he proposes to proceed further, but his inclination is only to impose a minor penalty, the necessity to appoint an Enquiry Officer may not arise. Conversely, the need to appoint an Enquiry Officer would arise if only the appointing authority is not satisfied with the explanation offered by the employee and that he proposes to inflict a major penalty."

Reliance was placed upon the order in W.P.No.14253 of 1997, dated 07.07.1997.

Certain submissions were made that the Manager of a temple cannot be equated with an Executive Officer and competency of the Manager to issue the impugned Memo also had been argued in elaboration. It is no doubt true that the impugned memo of the second respondent cannot be said to be an independent action. At the best, it can be said to be only a consequential action in pursuance of the directions given by the first respondent, who in fact, issued the said directions in the light of the legal opinion referred to supra.

The Rules referred to supra in G.O.Ms.No.830, Revenue (Endowments-I), dated 18.08.1989, were made in exercise of powers conferred under Sections 37 and 38 read with Section 153 of the Act.

Rule 4 of the said Rules had been referred to in particular. These are all concerned with the punishment of the office holders and servants and hence the elaborate submissions made by the counsel on record in this regard need not detain this Court any further.

In the light of the respective stands taken by the parties, let this dispute be decided by the Deputy Commissioner of Endowments, Kakinada, in accordance with law, after issuing notice to all the parties interested in this rotation of Archakatvam service of the subject temples. The parties are at liberty to put in their respective written pleadings and also adduce such evidence which they deem it fit and proper and let the Deputy Commissioner of Endowments record such evidence and pass an appropriate order in accordance with law, within a period of three months and inasmuch as an order of *status quo* was passed by this Court, till such decision is taken by the Deputy Commissioner, let the existing order of *status quo* as on this date be maintained.

The writ petition is disposed of with the above directions. No order as to costs.

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P.S.NARAYANA,J

Date: 19.12.2007
Note: L.R. copy to be marked.
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In the light of the respective stands taken by the parties, let this dispute be decided by the Deputy Commissioner of Endowments, Kakinada, in accordance with law, after issuing notice to all the parties interested in this rotation of Archakatvam service of the subject temples. He shall conduct such appropriate enquiry and made a decision in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. The parties are at liberty to put in their respective written pleadings and also adduce such evidence which they deem it fit and proper and let the Deputy Commissioner of Endowments records such evidence and made an appropriate order in accordance with law, within a period of

three months from the date of receipt of a copy of this order and in as much as an order of status quo was made by this Court till such decision is taken by the Deputy Commissioner let the status quo existing as on today to be maintained.

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[1] AIR 1970 SC 343
[2] 2007(2) ALD 569